REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

GOULDS PUMPS (PHILS.), INC.,
Petitioner,

C.T.A. Case No. 7057

Members:

- versus-

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

Promulgated:
FEB 4 2011
CHR 4:15 pm

x- x

DECISION

COTANGCO-MANALASTAS, J.:

This is a Petition for Review filed by Goulds Pumps (Phil.), Inc. (petitioner) on September 24, 2004, pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, due to the inaction of the Commissioner of Internal Revenue (respondent) on petitioner's Letter of Protest filed on December 30, 2003, assailing respondent's assessments dated October 17, 2003 for deficiency income tax, value-added tax (VAT), withholding tax on compensation, expanded withholding tax (EWT), final withholding tax (FWT), and documentary stamp taxes, including increments thereto, for fiscal year ended November 2000 in the aggregate amount of One Hundred Thirty Three Million Seven Hundred Eighty Seven Thousand Five Hundred Ninety Pesos and 14/100 (P133,787,590.14).

STATEMENT OF FACTS

The facts of the case, based on joint stipulations and evidence on record, are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at 12 Ring Road, Light & Industry Science Park (LISP II), Real, Calamba City, Laguna. Petitioner's principal office was previously located at Natividad Building, 2308 Chino Roces Avenue Extension, Makati City.[1] On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

On December 2, 2003, petitioner received respondent's Final Assessment Notice (FAN) dated October 17, 2003, assessing petitioner for alleged deficiency income tax, VAT, withholding tax on compensation, expanded withholding tax (EWT), and final withholding tax (FWT), including the increments thereto, for fiscal year ended November 2000 in the aggregate amount of ₱133,787,590.14, broken down as follows [2]:

Deficiency Tax	**Amount**	
Income Tax	P	95,201,001.15
Value-Added Tax		27,717,333.84
Withholding Tax on Compensation		4,221,581.25
Expanded Withholding Tax		634,659.80
Final Withholding Tax		5,977,242.62
Documentary Stamp Tax		35 ,771.48
TOTAL	₱	133,787,590.14

On December 30, 2003, petitioner protested the foregoing assessment by filing a letter-protest with the Bureau of Internal Revenue Large Taxpayer District

[1] Par. 1, The Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 102
[2] Exhibit "K"; Pars. 3 and 4, JSFI, docket, pp. 102 - 103

Office, Quezon City, through Deputy Commissioner Estelita C. Aguirre, Officer-in-Charge (OIC) of Large Taxpayer Service.[3]

On February 27, 2004, petitioner submitted additional documents in support of its protest.[4] However, respondent did not act on petitioner's protest; hence, petitioner filed the instant Petition for Review on September 24, 2004.[5]

On December 20, 2004, respondent filed his Answer[6] to the said petition.

On October 18, 2005, this Court appointed Mr. Ruben R. Rubio, Partner of SGV & Co., as Independent Certified Public Accountant (CPA) upon petitioner's Motion to Commission Independent Certified Public Accountant[7], pursuant to CTA Circular No. 1-95, as amended.

During trial, petitioner presented as witnesses Mr. Ruben R. Rubio and Mr. Benedicto Horca III, the Finance Manager of petitioner. Thereafter, petitioner filed its Formal Offer of Evidence[8] on July 30, 2007, submitting Exhibits "A" to "I", "K" to "TT", "VV" to "GGG", and "JJJ" to "VVV", inclusive of sub-markings; which this Court admitted in the Resolution[9] dated October 1, 2007.

On the other hand, respondent presented as his sole witness Ms. Eulema R. de Vera.[10]

On June 16, 2008, petitioner filed a Manifestation and Motion[11] averring that on March 6, 2008, it availed of the tax amnesty program under Republic Act (R.A.) No. 9480 and Revenue Memorandum Circular No. 19-2008 and paid the amnesty tax

---

3 Annex "B" of the Petition for Review, docket, pp. 22 to 30; Par. 5, JSFI, docket, p. 103
4 Annex "C" of the Petition for Review, docket, pp. 31 to 32; Par. 6, JSFI, docket, p. 103
5 Par. 7, JSFI, docket, p. 103
6 Docket, pp. 56 - 60
7 Docket, pp. 122 to 124
8 Docket, pp. 201 - 213
9 Docket, pp. 241 - 242
10 Exhibit "16"
11 Docket, pp. 283 - 288

of P250,000.00. Petitioner thus averred that it is entitled to all the immunities and privileges under Section 6 of R.A. No. 9480, such as the immunity from the deficiency income tax, value-added tax, and documentary stamp tax assessments, including increments thereon for taxable year 2000 in the aggregate amount of P122,954,106.47. In support thereof, petitioner attached to the said motion documents marked as Annexes "A" to "E"[12] as proof of its tax amnesty availment.

On August 20, 2008, petitioner filed its Amended Petition for Review[13]. In its Amended Petition for Review, petitioner incorporated the allegation pertaining to the said tax amnesty availment, and deleted those relating to the assessments for deficiency income tax, VAT, and documentary stamp tax; while the allegations pertaining to the assessments for deficiency expanded withholding tax, withholding tax on compensation and final withholding tax in the aggregate amount of P10,833,483.67, including the increments thereon, for fiscal year ending November 2000 are retained.

During the August 29, 2008 hearing, petitioner presented and marked the original documents supporting its availment of the tax amnesty program under R.A. No. 9480.[14]

On September 4, 2008, respondent filed his Amended Answer (To the Amended Petition for Review)[15] raising the following Special and Affirmative Defenses:

---

[12] Notice of Availment of Tax Amnesty under Republic Act No. 9480 dated March 6, 2008, Statement of Assets and Liabilities and Networth (SALN) as of December 31, 2005, Tax Amnesty Return (BIR Form No. 2116), Tax Amnesty Payment Form/Acceptance of Payment Form (BIR Form No. 0617), Annual Income Tax Return (BIR Form No. 1702) with attached Audited Financial Statements as of December 31, 2005[12], docket, pp. 290 - 366.

[13] Docket, pp. 388 - 401

[14] Exhibits "AAAA", "BBBB", "BBBB-1", "BBBB-2", "BBBB-3", "BBBB-4", "BBBB-5", "BBBB-6", "CCCC", "DDDD", "EEEE" , and "FFFF"

[15] Docket, pp. 434 - 437

"SPECIAL AND AFFIRMATIVE DEFENSES

3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Section 228 of the Tax Code, partly provides:

> 'Sec. 228. Protesting of Assessment. - Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.*
>
> If the *protest* is denied in whole or in part, *or is not acted upon within one hundred eighty (180) days from the submission of the documents, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) day period; otherwise, the decision shall become final, executory and demandable.*' (Emphasis supplied)

In the instant case, since the Petition for Review filed by petitioner with this Honorable Court was not made within thirty (30) days from the lapse of the one hundred eighty (180) days period, the subject assessments has already become final, executory and demandable.

5. Since the subject assessments has already become final, executory and demandable, this Honorable Court has no jurisdiction to act on the instant petition.

6. Assuming arguendo that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax, for taxable fiscal year ended November 30, 2000, for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or controvert by concrete evidence the BIR findings that:

A.) Expanded Withholding Tax:

1. Petitioner failed to withhold and/or underwithheld its various income payments on rental expenses of P48,959.51, professional fees P580,147.46, and local purchase of goods/services, outside services, advertising & others in the aggregate amount of P33,597,430.46, or the total of P34,226,537.43, pursuant to Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 2-98.

2. Petitioner failed to submit any documentary evidence that said purchase of goods/services were supplied by Gould Pumps (N.Y.). However, assuming for the sake of argument that indeed these income payments of goods/services were supplied by Gould Pumps (N.Y.) Inc., such fact would not automatically exempt petitioner from the withholding tax regulation, specifically under Section 2.57.5(B) of RR2-98.

3. Petitioner failed to secure a favorable BIR exemption and/or ruling exempting its income payments from withholding tax.

B.) Final Withholding Tax:

1. Petitioner failed to withhold the income payments on dividends of P44,000,000.00 and trademark/royalties of 724,994.00, or the total amount of P44,724,994.00, which is subject to final withholding tax at the rate of 15% and 32%, pursuant to Section (H)(2) of Revenue Regulations No. 2-98 and Section 2.57-1(1) of Revenue Regulations 2-98.

2. Petitioner failed to accompany the remittance return with official receipt duly issued by the accredited bank, hence, the disallowance of its claimed remittance in the amount of P2,400,000.00.

C.) Withholding Tax on Compensation:

1. Reconciliation of petitioner's salaries and wages per Financial Statement as against its alpha list showed an underwithholding in the amount of P8,567,632.96.

2. Petitioner failed to substantiate that part of discrepancy it referred to, as contribution to retirement fund and dealer's commission.

3. Petitioner failed to submit to the BIR examiners the retirement plan program duly approved by the Bureau of Internal Revenue.

7. Pursuant to Section 222(a) of the 1997 Tax Code, it is provided that in case of a false or fraudulent return with intent to evade tax or failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time within ten (10) years after the discovery of the falsity, fraud or omission.

In the instant case, since it was disclosed that petitioner failed to withhold and/or underwithheld its various income payments as specified under the Details of Discrepancies attached to the Final Assessment Notice dated October 17, 2003 of the BIR, therefore, the monthly remittance returns on creditable income taxes filed by petitioner for December 1999 to October 2000 were underdeclared by more than thirty percent (30%) which constitutes fraud or fraudulent return, hence, the assessment for deficiency expanded withholding tax was made within ten (10) years from the discovery of the said fraud or falsity.

8. The assessments issued against petitioner for deficiency withholding tax on compensation, expanded withholding tax and final withholding tax, for fiscal year ended November 30, 2000 were made in accordance with law and regulations.

9. All presumptions are in favor of the correctness of tax assessments."

On the other hand, petitioner filed its Reply (to Respondent's Amended Answer dated 1 September 2008)[16] on September 15, 2008.

In the Resolution[17] dated October 7, 2008, this Court resolved that the documents proving petitioner's availment of the provisions of Republic Act No. 9480 were duly compared with the originals, and found them to be faithful reproduction of the same during the hearing on August 29, 2008; and that petitioner's Petition for Review filed on September 24, 2004 insofar as the assessments for deficiency income, value-added tax, and documentary stamp taxes are concerned is deemed withdrawn and that the case covering the same is considered closed and terminated, subject to the provisions of R.A. No. 9480; while petitioner's assessments for deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax in the amount of P10,833,483.67, which is the subject matter of petitioner's Amended Petition for Review, remains.

On December 11, 2008, petitioner presented Ms. Anna Laurice Santos[18], as its third witness. On January 5, 2009, petitioner filed its Supplemental Formal Offer Of

---

[16] Docket, pp. 425 - 431
[17] Docket, pp. 445 - 446
[18] Exhibits "ZZZ" and "ZZZZ-1"

Evidence[19], submitting Exhibits "WWW" to "ZZZ," inclusive of sub-markings; which were admitted in the Resolution[20] dated February 27, 2009.

On the other hand, respondent presented as his lone witness Ms. Eulema R. De Vera. On August 24, 2009, respondent filed his Formal Offer of Evidence[21], submitting Exhibits "1" to "16", inclusive of sub-markings; which were admitted in the Resolution[22] dated November 11, 2009.

On February 18, 2010, this case was submitted for decision, considering petitioner's Memorandum[23] filed on December 22, 2009, and respondent's Manifestation and Motion[24] filed on January 22, 2010 that respondent is adopting the arguments and affirmative defenses found in the Amended Answer filed on September 4, 2008, as well as all other documents formally offered as evidence and those found in the BIR records of this case and the testimonies of Revenue Officer Eulema R. De Vera, as respondent's Memorandum in the above-captioned case.

The following are the parties' jointly stipulated issues[25] submitted for this Court's consideration:

> "**General**
>
> 1. Whether or not the assessments for deficiency VAT and Expanded Withholding Tax have prescribed.
>
> **Income**
>
> 2. Whether or not the deficiency Income Tax assessment arising from the disallowed rentals, professional fees, local purchase of goods and services is void for failure to state in writing the breakdown of the disallowances.

---

[19] Docket, pp. 557 - 563
[20] Docket, pp. 660 - 661
[21] Docket, pp. 685 - 693
[22] Docket, pp. 717 - 718
[23] Docket, pp. 719 - 752
[24] Docket, pp. 760 - 761
[25] Docket, pp. 109 - 111

3. Whether or not the difference between Sales/Receipts per Income Tax Return and Total Debits of Accounts Receivable per General Ledger of P100,956,995.66 represents undeclared sales.

4. Whether or not the amount of P48,959.91 alleged by Respondent to be rental expense should be disallowed for alleged failure to subject the same to Withholding Tax.

5. Whether or not the professional fees in the amount of P580,147.46 should be disallowed for alleged failure to subject the same to Withholding Tax.

6. Whether or not the disallowed purchase of goods and services in the amount of P32,236,414.46 represents purchases from a PEZA registered enterprise, and whether or not the same amount is subject to Expanded Withholding Tax.

7. Whether or not a specific ruling from the BIR is necessary in order for goods and services supplied by a PEZA registered enterprise to be exempt from Withholding Tax. Whether or not the amount of purchases per the audited Financial Statements is correct.

8. Whether or not the alleged understatement of purchases in the amount P54,485,580.33 which was computed by Respondent by comparing an amount derived from the Accounts Payable account and the purchases per audited Financial Statements can result in deficiency Income Tax.

9. Whether or not the amount of P1,354,466.34 paid by Petitioner to its dealers as commissions should be disallowed as an expense and whether or not the same amount was already subjected to Expanded Creditable Withholding Tax.

10. Whether or not the amount of P7,079,171.13 representing the contribution of Petitioner to its employees' retirement fund should be disallowed as an expense.

Value-added Tax

11. Whether or not the alleged underdeclared sales of P100,956,995.66 under Income Tax should be included in the computation of Petitioner's gross sales for VAT purposes.

12. Whether or not the amount of P54,485,580.33 allegedly representing understatement of purchases in the audited Financial Statements under Income Tax should result in deficiency VAT.

13. Whether or not the alleged discrepancy of the purchases per audited Financial Statements and per VAT Returns in amount of P29,854,882.40 should result in the disallowance of input tax of P2,985,488.24.

14. Whether or not the amount of P176,114.38 representing input tax paid to suppliers, whose taxpayer's identification numbers (TIN)

were not indicated in the Summary of Purchases attached to the VAT Returns should be disallowed.

Expanded Withholding Tax

15. Whether or not the disallowed deductions for rental expenses, professional fees, and local purchases of goods and services totaling P34,226,537.43 under the Income Tax Assessment are subject to Expanded Withholding Tax.

16. Whether or not the disallowed rentals, professional fees and local purchases of goods and services under the Income Tax Assessment for alleged lack of withholding can again be the subject of the deficiency Expanded Withholding Tax assessment.

17. Whether or not the dividends paid by Petitioner was subject to final Withholding Tax.

18. Whether or not Petitioner paid goodwill to a non-resident.

19. Whether or not payments made by Petitioner to its dealers/agents which were subjected to the Expanded Withholding Tax should be subjected to Withholding Tax on Compensation.

20. Whether or not the documentary stamp tax assessed in the amount of P35,771.48 has already been paid by Petitioner."

In view of petitioner's availment of tax amnesty under R.A. No. 9480, this Court's evaluation will now be limited to the remaining issues pertaining to assessments for deficiency (a) withholding tax on compensation, (b) expanded withholding tax, and (c) final withholding tax for fiscal year ended November 2000.

This Court, before addressing the substantial issues shall first resolve the preliminary matter pertaining to jurisdictional issue raised in the Amended Answer.

Respondent essentially alleged that the Petition for Review was not filed within thirty (30) days from the lapse of the one hundred eighty (180)-day period pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, concluding that the subject assessments have already become final, executory and demandable; thus, this Court has no jurisdiction to act thereon.

The contention is without merit.

Section 228 of the NIRC of 1997 provides:

> "Sec. 228. *Protesting of Assessment.* - Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. *Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final*;
>
> If the protest is denied in whole or in part, **or is not acted upon within one hundred eighty (180) days from the submission of the documents, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180) days period; otherwise, the decision shall become final, executory and demandable."** (*Emphasis supplied*)

Based on the foregoing, petitioner may file an administrative protest within thirty (30) days from receipt of the assessment. Thereafter, all the relevant supporting documents shall be submitted within sixty (60) days from the date of filing of the said protest, otherwise, the assessment shall become final. If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from the submission of the documents, the taxpayer adversely affected by the decision or inaction may appeal to this Court within thirty (30) days from receipt of the said decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory, and demandable.

The present claim involves final assessments on petitioner's deficiency withholding tax on compensation, expanded withholding tax, and final withholding tax for fiscal year ending November 2000. Counting from December 2, 2003, when petitioner received respondent's Final Assessment Notice[26], petitioner had until January 2, 2004[27] to file administrative protest; from January 2, 2004, petitioner had until March 2, 2004 to submit the documents supporting its administrative protest;

---

[26] Exhibit "K"; Pars. 3 and 4, JSFI, docket, pp. 102 - 103
[27] January 1, 2004 being a holiday

counting from March 2, 2004, the 180-day period will expire on August 29, 2004 in case of respondent's inaction on petitioner's administrative protest; and from August 29, 2004, petitioner had until September 28, 2004 to file its Petition for Review.

In the instant case, it is undisputed that petitioner received on December 2, 2003 respondent's Final Assessment Notice dated October 17, 2003. Thereafter, on December 30, 2003, petitioner protested the foregoing assessments by filing a letter-protest with the Bureau of Internal Revenue Large Taxpayer District Office, Quezon City, through Deputy Commissioner Estelita C. Aguirre, OIC of the BIR Large Taxpayer Service.[28] On February 27, 2004, petitioner submitted the documents supporting its protest.[29] However, respondent failed to act on petitioner's protest within the 180-day period prescribed in Section 228 of the NIRC of 1997; which, reckoned from the date of submission of petitioner's documents, lapsed on August 25, 2004. Hence, petitioner had until September 24, 2004 to file the instant Petition for Review. Petitioner filed the instant Petition for Review on September 24, 2004, which is within the prescriptive period. Clearly, this Court has jurisdiction to act on the instant petition.

This Court shall now proceed to address the substantive issues raised by the parties.

Petitioner claims that the assailed assessments are without factual and legal basis.

The petition is partly meritorious, as discussed hereunder.

<u>I. Deficiency Withholding Tax on Compensation</u>

Upon comparison of petitioner's Salaries and Wages as reflected in its Financial Statements (FS)/General Ledger(GL) *vis-à-vis* the amount shown in its Alphalist, respondent found that Salaries and Wages amounting to P8,433,644.00 was not

---

[28] Annex "B" of the Petition for Review, docket, pp. 22-30; Par. 5, JSFI, docket, p. 103
[29] Annex "C" of the Petition for Review, docket, pp. 31-32; Par. 6, JSFI, docket, p. 103

subjected to withholding tax, and consequently assessed petitioner for deficiency withholding tax on compensation for fiscal year 2000 in the amount of P4,221,581.25, computed as follows:[30]

Salaries and Wages per FS/GL	P 23,026,964.00
Per Alphalist	14,459,331.04
	P 8,567,632.96
Less: De minimis benefits	133,988.96
Salaries not subjected to withholding	P 8,433,644.00
Tax due (32%)	P 2,698,766.08
Interest (1.11.01 to 10.31.03)	1,497,815.17
Compromise penalty	25,000.00
Total amount due	**P 4,221,581.25**

Petitioner claims that the discrepancy of P8,433,644.00 pertains to its contributions to its retirement fund and payments of dealers' commissions. Contributions to its retirement fund do not constitute compensation income; hence, not subject to withholding tax on compensation. As regards the dealers' commissions, petitioner avers that these payments were made to its dealers/agents who are not its regular employees, thus, were properly subjected to expanded withholding tax pursuant to Section 2.57.2(G) of Revenue Regulations No. 2-98 which states:

> "SECTION 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* — x x x
>
> xxx xxx xxx
>
> (G) *Income payments to certain brokers and agents.* — On gross commissions of customs, insurance, real estate and commercial brokers and fees of agents of professional entertainers — Five percent (5%);"

In his Final and Consolidated Report[31] dated August 24, 2006, the Court-commissioned Independent CPA[32] explained the discrepancy of P8,433,644.00 as follows:

[30] Exhibit "K"
[31] Exhibit "AAA"
[32] Ruben R. Rubio, Partner of SGV & Co.

Commissions Expense	P 1,354,466.34
Employee Welfare Expense	7,079,171.13
Total	**P 8,433,637.47** [33]

As verified by the Independent CPA, commissions subjected to withholding tax per EWT returns[34] as "Payments To Brokers" amounted only to P889,782.15, which included the amount of P22,345.44[35] recorded by petitioner in its books as "Professional Fees". Thus, total commissions expense per books upon which EWT was withheld and paid was only P867,436.71; while the remaining amount of P487,029.63 was not subjected to EWT.

Anent the Employee Welfare Expense account, the Independent CPA found that it comprised of the following:[36]

Accrual - Medical Benefits	P 15,000.00
Accrual - Retirement Pay	5,566,725.00
Accrual - Sick Leave	430,479.94
Amortization of Health Insurance	30,166.68
Amortization of Life Insurance	30,166.81
Amortization of Prepaid Insurance	60,333.46
Various Entries	946,299.24
Total	**P 7,079,171.13**

Petitioner submitted a letter from the BIR dated October 4, 1977, approving petitioner's Retirement Plan[37] and another BIR letter dated August 15, 2003[38], approving the amendments thereto, stating that since the said amendments "are not prejudicial to the employee-members, they will not affect the Plan's qualification under Section 32(B)(6)(a) of the NIRC of 1997."[39] Section 32(B)(6)(a) of the Tax Code of 1997 provides for exclusion of retirement benefits, pensions, gratuities, etc., from gross income, as follows:

[33] Page 22, Exhibit "AAA"
[34] Exhibits "N-1" to "N-26"
[35] Page 16, Exhibit "AAA"; and Annex 6 of Exhibit "AAA"
[36] Page 24, Exhibit "AAA"; and Annex 15 of Exhibit "AAA"
[37] Exhibit "H"
[38] Exhibit "I"
[39] Exhibit "I"

> "(6) *Retirement Benefits, Pensions, Gratuities, etc.* –
>
> a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided, further*, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. x x x."

In the instant case, except for the letters dated October 4, 1977 and August 15, 2003, where the BIR purportedly approved petitioner's retirement plan and amendments thereto (Exhibits "H" and "I"), and its general ledger[40] for the Employee Welfare Expense account, no other documents or proof were presented by petitioner to establish its claim that the said expense account is attributable in its entirety to said retirement plan. In other words, this Court cannot determine whether the amounts reflected in the general ledger are correct and that petitioner's contribution to its employees' retirement fund booked to Employee Welfare Expense account is proper exclusion from gross income.

As a result, said assessment is upheld for petitioner's failure to substantiate its commissions expense and employee welfare expense accounts, except for the commissions expense duly subjected to expanded withholding tax in the amount of P867,436.71. Accordingly, petitioner is liable to pay basic deficiency withholding tax on compensation for fiscal year 2000 in the amount of P7,566,207.29 computed as follows:

Salaries and Wages per FS/GL	P 23,026,964.00
Less: Salaries and Wages per Alphalist	14,459,331.04
De minimis benefits	133,988.96
Salaries not subjected to withholding per audit of BIR	P 8,433,644.00
Less: Commissions subjected to EWT	867,436.71
Adjusted Salaries and Wages not subjected to withholding	P 7,566,207.29

[40] Exhibit "NN"

Tax Rate	32%
Deficiency Withholding Tax on Compensation	**P 2,421,186.33**

It bears stressing that the compromise penalty of P25,000.00 originally imposed by respondent is excluded, there being no compromise agreement between the parties.

II. Deficiency Expanded Withholding Tax (EWT)

Per the investigation of respondent's examiner, the following income payments were allegedly not subjected to expanded withholding taxes, thus, the deficiency EWT assessment in the amount of P634,659.80, computed as follows:[41]

	Amount	Tax Rate	Tax Due
A. Rental	P 48,959.51	5%	P 2,447.98
B. Professional fees	580,147.46	10%	58,014.75
C. Local purchases, outside services, advertising and others	33,597,430.46	1%	335,974.30
Total	**34,226,537.43**		
Basic EWT due			P 396,437.03
Interest (1.11.01 to 10.31.03)			222,222.77
Compromise penalty			16,000.00
Total amount due			**P 634,659.80**

Petitioner argues that respondent's right to assess deficiency EWT for the months of December 1999 to October 2000 had already prescribed.

Respondent counter-argues that petitioner failed to withhold and/or underwithheld its various income payments as specified under the Details of Discrepancies attached to the Final Assessment Notice dated October 17, 2003 of the BIR; therefore, the monthly remittance returns on creditable income taxes filed by petitioner for December 1999 to October 2000 were underdeclared by more than thirty percent (30%), which constitutes fraud or fraudulent return. Respondent concludes that

[41] Page 5, Exhibit "8-B" and Exhibit "K"

the assessment for deficiency expanded withholding tax was made within ten (10) years from the discovery of the said fraud or falsity.

The contention of respondent is without merit.

Section 203 of the NIRC of 1997, as amended, provides that the internal revenue taxes shall be assessed within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later, as quoted below:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* — *Except as provided in Section 222*, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Emphasis supplied*)

In conjunction thereto, Section 4.3.2 of Revenue Regulations No. 01-98 provides:

> "SECTION 4. *Filing of Returns and Payment of Taxes.* —
>
> xxx xxx xxx
>
> 3.2 Withholding Tax Remittance and Information Returns
>
> All withholding taxes of the Head Office and/or any branch/unit of a Large Taxpayer shall be covered by a consolidated return, and remitted within twenty five (25) days after the close of each month."

On the other hand, Section 222 of the NIRC of 1997 provides:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

Fraud contemplated by law must be actual and not constructive. It must be intentional, consisting of deception, willfully and deliberately done or resorted to in order to induce another to give up some right.[42]

In the instant case, respondent presented Exhibits "1" to "16", inclusive of sub-markings, in support of the allegation in the Amended Answer and the testimony of Ms. Eulema R. de Vera[43]. A careful review of the said evidence reveals that the same do not support or prove acts constituting fraud as alleged in the Amended Answer. Thus, respondent fails to prove that the alleged failure to withhold and/or underwithholding of various income payments constitute fraud to qualify the period of prescription from 3 years to 10 years provided under Section 222(a) of the NIRC of 1997, as amended. The allegation of fraud only came up in the Amended Answer when petitioner filed an Amended Petition for Review incorporating its availment of tax amnesty under R.A. No. 9480, and not alleged as such in the original Answer filed by respondent, which formed part of the records of this case. As correctly pointed out by petitioner, if respondent believed that petitioner committed fraud, it would have had imposed the 50% surcharge under Section 248(B) of the NIRC in the final assessment notice, instead of 25%, which respondent had imposed. Thus, the general rule under Section 203 of the NIRC of 1997 applies.

Pursuant to the afore-cited Section 203 of the NIRC of 1997, the three-year period to assess commences from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later. In the case of creditable expanded withholding taxes, the consolidated return of a large taxpayer is required to be filed within twenty five (25) days after the end of each month. So, if the

---

[42] Aznar v. Court of Tax Appeals,No. L-20569, August 23, 1974 (58 SCRA 519); and Farolan, Jr. vs. Court of Tax Appeals, *et al.*, G.R. No. 42204, January 21, 1993 (217 SCRA 298)

[43] Minutes dated February 5, 2008 and May 27, 2008, docket, pp. 272 and 275; Exhibit "16" Judicial Affidavit dated February 4, 2008

return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was actually filed. Therefore, respondent had until the following dates within which to assess petitioner of the subject deficiency EWT for fiscal year ending November 30, 2000:

Period Covered	Makati Office		Cebu Office		Davao Office	
	Exhibit No.	**Return Filed On**	**Exhibit /BIR Records Page No**	**Return Filed On**	**Exhibit /BIR Records Page No**	**Return Filed On**
Dec-99	N-1 to N-4	1/25/2000	O-1 to O-4	1/25/2000	P-1 to P-3	1/26/2000
Jan-00	N-5 to N-6	2/24/2000	O-5 to O-8	2/8/2000	P-4 to P-6, BIR Records, p. 103	2/10/2000
Feb-00	N-7 to N-8	3/21/2000	O-9 to O-12	3/9/2000	P-7, BIR Records, p. 103	3/10/2000
Mar-00	N-9 to N-10	4/24/2000	O-13, BIR Records, p. 106	4/10/2000	P-8 to P-10, BIR Records, p. 103	4/7/2000
Apr-00	N-11 to N-12	5/24/2000	O-14 to O-15	5/5/2000	P-11 to P-12, B	5/10/2000
May-00	N-13 to N-14	6/26/2000	O-16 to O-17	6/6/2000	BIR Records, p. 103	6/8/2000
Jun-00	N-15 to N-16	7/25/2000	O-18 to O-19	7/7/2000	P-13 to P-14	7/7/2000
Jul-00	N-17 to N-18	8/25/2000	O-20 to O-21	8/4/2000	P-15, BIR Records, p. 103	8/10/2000
Aug-00	N-19 to N-20	9/25/2000	O-22 to O-23	9/6/2000	P-16 to P-17	9/8/2000
Sep-00	N-21 to N-22	10/25/2000	O-24 to O-25	10/10/2000	P-18 to P-19	10/10/2000
Oct-00	N-23 to N-24	11/24/2000	O-26 to O-27	11/10/2000	P-20 to P-21	11/9/2000
Nov-00	N-25 to N-26	12/26/2000	O-28 to O-29	12/11/2000	P-22 to P-23	12/11/2000

Period Covered	Last Day to File Consolidated Return	Last Day to Assess
Dec-99	1/25/2000	1/27/2003
Jan-00	2/25/2000	2/25/2003
Feb-00	3/27/2000*	3/27/2003
Mar-00	4/25/2000	4/25/2003
Apr-00	5/25/2000	5/26/2003
May-00	6/26/2000*	6/26/2003
Jun-00	7/25/2000	7/25/2003
Jul-00	8/25/2000	8/25/2003
Aug-00	9/25/2000	9/25/2003

Sep-00	10/25/2000	10/27/2003
Oct-00	11/27/2000*	11/27/2003
Nov-00	12/26/2000*	12/26/2003

* the 25th day of the month fell either on a Saturday, Sunday or legal holiday

Clearly, the Final Assessment Notice[44] received by petitioner on December 2, 2003 is beyond the three-year prescriptive period within which respondent could make an assessment for deficiency EWT for the months of December 1999 to October 2000.

On the other hand, respondent's right to assess petitioner for deficiency EWT for the month of November 2000 has not yet prescribed, considering that the issuance of the FAN issued on December 2, 2003 was made before the three-year period expired on December 26, 2003. Nevertheless, since petitioner was not able to show which portion of the income payments subject of the deficiency EWT assessment for the entire fiscal year 2000 pertain to the prescribed months of December 1999 to October 2000, all of the subject income payments shall be considered as referring to the unprescribed month of November 2000.

This Court shall now determine the merits of the deficiency EWT assessment for fiscal year 2000.

A. Rental

Respondent assessed petitioner for deficiency EWT on rental expenses by comparing the following:

	Rental
Per ITR/GL[45]	P 3,446,253.00
Alphalist[46]	3,397,293.49
Difference	**P 48,959.51**

h

[44] Exhibit "K"
[45] Exhibit "M-3"
[46] Exhibits "S", "T", and "U"

Petitioner asserts that all rental payments for taxable year 2000 were subjected to creditable withholding tax.

The Court agrees with petitioner.

The Independent CPA presented the following reconciliation of petitioner's rent expense as declared in its Income Tax Return for FY 2000 and as reflected in its EWT returns for the same year, noting a discrepancy of P49,995.67:[47]

Rent Expense:		
Per ITR for FY 2000		P 3,446,253.00
Per EWT Returns		3,013,448.88
Difference		**P 432,804.12**
Less: Difference as accounted for		
a. Misposting of rent expense to professional fees in the EWT Returns (Makati) for Sept. and Oct. 2000	P 439,364.00	
b. VAT component subjected to EWT as reflected in EWT Returns (Makati) for Oct. and Nov. 2000	(34,955.55)	
c. Credit adjustments to rent expense (F. Carriedo)	(21,600.00)	382,808.45
Difference to be accounted for		**P 49,995.67**

The above discrepancy represents rental expenses of petitioner's Davao office for the months of October and November 2000 in the total amount of P50,000.00 (P25,000.00/month). The Independent CPA stated that he was unable to verify the amount of P50,000.00 due to the unavailability of the EWT returns filed by petitioner's Davao office for October and November 2000. However, petitioner proffered before this Court the Monthly Remittance Returns[48] filed by its Davao office for the months of January to December 2000 and the corresponding Alphalist[49], which showed that its Davao office remitted to the BIR the five percent (5%) EWT due on the rental expense of P50,000.00 for the months of October and November 2000.

[47] Page 14, Exhibit "AAA"
[48] Exhibits "P-1" to "P-23"
[49] Exhibit "U"

In fine, petitioner sufficiently proved that it withheld and remitted the EWT due on its rental payments for fiscal year 2000. Thus, respondent's deficiency EWT assessment on the rental amount of P48,959.51 is improper and should be cancelled.

B. Professional Fees

Based on the records of the case, respondent's examiner computed the deficiency EWT assessment on professional fees as follows:

	Professional Fees
Per GL[50]	P 741,147.46
Alphalist[51]	161,000.00
Difference	**P 580,147.46**

Petitioner avers that the aforesaid amount represents payments to general professional partnerships (GPPs) and accrual of audit fees payable to SGV & Co., which are exempt from creditable withholding tax pursuant to Section 2.57.5 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 14-2002.

Indeed, income payments made to professional partnership as a juridical person are exempt from income tax *vis-à-vis* the expanded withholding tax. Its partners are the ones liable in their individual capacity for the payment of income tax pursuant to Section 26 of the NIRC of 1997. This was elucidated by the Supreme Court in the case of *Rufino R. Tan, et al. vs. Ramon R. del Rosario Jr., as Secretary of Finance and Jose U. Ong, as Commissioner of Internal Revenue*[52], to wit:

> "'Exempt partnerships', upon the other hand, are not similarly identified as corporations nor even considered as independent taxable entities for income tax purposes. A general *professional* partnership is such an example. Here, the partners themselves, not the partnership, (although it is still obligated to file an income tax return [mainly for administration and

---

[50] Exhibit "L-3", consisting of:

Non-professional dues	P 7,985.17
Prof. Services-Auditors	421,009.13
Prof. Services-Actuaries	35,000.00
Prof. Services-Others	277,173.16
TOTAL	**P741,147.46**

[51] Exhibits "S", "T", and "U"

[52] GR. Nos. 109289 and 109446, October 3, 1994

data]), are liable for the payment of income tax in their *individual* capacity computed on their respective and distributive shares of profits. In the determination of the tax liability, a partner does so as an *individual*, and there is no choice on the matter. In fine, under the Tax Code on income taxation, the general professional partnership is deemed to be no more than a mere mechanism or a flow-through entity in the generation of income by, and the ultimate distribution of such income to, respectively, each of the individual partners."

Even though the law exempts income payments made to general professional partnerships from income tax, and consequently, from expanded withholding tax, petitioner failed however to present proof that the amount of P580,147.46, purportedly representing payment for professional services, falls squarely within the said exemption provided under Section 26 of the NIRC of 1997.

Based on the Independent CPA's reconciliation of the Professional Fees recorded per petitioner's GL *vis-à-vis* the Professional Fees reflected per petitioner's EWT returns, the Court notes the following[53]:

Professional Fees			
Per Income Tax Return for the FY 2000			P 1,274,027.98
Per EWT Returns for FY 2000			607,614.50
Difference - Amount per Income Tax Return is higher			P 666,413.48
Less:	Difference As Accounted For		
	a. Payments to General Professional Partnerships (GPPs)	P 418,281.08	
	b. Payments to Brokers (based on Alphalist of Payees) booked under Professional Fees SL	22,345.44	
	c. Payments to Contractors (based on Alphalist of Payees) booked under Professional Fees SL	69,660.89	
	d. Misposting of Rent Expense to Professional Fees in the EWT returns (Makati) for the following months	(439,364.00)	
	- September 2000		
	- October 2000		
	e. Accrual of Audit Fees	393,509.13	464,432.54
Difference to be accounted for			**P 201,980.94**

In the absence of documentary proof, the Court cannot verify the actual nature of the amounts of P418,281.08 and P393,509.13 indicated as "Payments to GPPs" and "Accrual of Audit Fees", respectively. Moreover, the discrepancy found by the

[53] Page 16, Exhibit "AAA"

Independent CPA in the amount of P201,980.94 remained unaccounted for. In view of petitioner's failure to refute the examiner's findings, respondent's inclusion of this item in the computation of the deficiency EWT is proper.

C. Local Purchases

Respondent assessed petitioner for deficiency EWT in the amount of P33,597,430.46, representing petitioner's local purchases of goods/services. Petitioner explained that these purchases represent purchases of goods and services from Goulds Pumps (N.Y.), Inc., which is a company registered with the Philippine Economic Zone Authority (PEZA),[54] as jointly stipulated by the parties.[55] As such, said supplier is exempt from creditable withholding tax in accordance with Section 2.57.5(2) of Revenue Regulations No. 2-98.

Respondent asserts that even if PEZA-registered enterprises are exempt from EWT, it cannot automatically exempt petitioner from compliance with the withholding tax regulation. To be exempt, petitioner should obtain a favorable BIR Ruling to that effect.

The Court finds for petitioner.

Section 2.57.5(2) of Revenue Regulations No. 2-98 reads:

> "SECTION 2.57.5. *Exemption from Withholding*. — The withholding of creditable withholding tax prescribed in these Regulations **shall not apply to income payments made to the following**:
>
> xxx xxx xxx
>
> (B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the .following:
>
> xxx xxx xxx
>
> (2) **Corporations registered with the Board of Investments and enjoying exemption from the income tax provided by**

---

[54] Exhibit "PP"
[55] Par. 18, The Facts, JSFI, docket, p. 108

Republic Act No. 7916 and the Omnibus Investment Code of 1987;" *(Emphasis supplied)*

From the foregoing, it is explicitly stated that income payments to PEZA-registered enterprises are exempt from creditable withholding tax, thus this Court holds that no BIR Ruling is required.

As aptly found by the Independent CPA from petitioner's related general and subsidiary ledgers[56], journal vouchers[57], and sales invoices[58] issued by Goulds Pumps (N.Y.), Inc., the subject purchases in the amount of P33,597,430.46 were obtained by petitioner from Goulds Pumps (N.Y.), Inc.[59] Undoubtedly, respondent's deficiency EWT assessment on the amount of P33,597,430.46 is devoid of legal and factual bases and should therefore be cancelled.

To recapitulate, respondent's deficiency EWT assessment for FY 2000 on petitioner's rental expense of P48,959.51 and local purchases of goods of P33,597,430.46 should be cancelled and withdrawn. However, petitioner is liable to pay 10% basic deficiency EWT of P58,014.75 on the professional fees of P580,147.46, computed as follows:

Professional Fees	P 580,147.46
EWT Rate	10%
Basic EWT due	**P 58, 014.75**

There being no compromise agreement between the parties, the compromise penalty of P16,000.00 imposed by respondent is hereby cancelled.

[56] Exhibits "X" and "Y"
[57] Exhibit "Z"
[58] Exhibits "BB-1" to "BB-320" as summarized in Annex A of Exhibit "AAA"
[59] Page 20, Exhibit "AAA"

III. Deficiency Final Withholding Tax (FWT)

Petitioner was assessed for payment of deficiency FWT for FY 2000 in the amount of P5,977,242.62, computed as follows:[60]

	Amount	Tax Rate	FWT Due
Dividends paid per books	P 44,000,000.00	15%	P 6,600,000.00
Payment of trademark-royalty	724,994.00	32%	231,998.08
Total	P 44,724,994.00		P 6,831,998.08
Less: Remittances			3,000,000.00
Basic tax due			P 3,831,998.08
Interest (1.25.01 to 10.31.03)			2,120,244.54
Compromise penalty			25,000.00
Total amount due			**P 5,977,242.62**

Petitioner alleges that out of the P44,000,000.00 dividends paid in the year 2000, P24,000,000.00 was declared in 1999 and the remaining P20,000,000.00 was declared in the year 2000 for which 15% FWT was paid in the year the dividends were declared.

The P3,000,000.00 remittance recognized by respondent pertains to the 15% FWT due on the P20,000,000.00 dividends declared by petitioner, in the year 2000 supported by BIR Form No. 1601-F.[61]

The 15% FWT due on the P24,000,000.00 dividend declaration in 1999 is P3,600,000.00. Respondent disallowed the remittance amounting to P2,400,000.00 supported by BIR Form No. 1601[62] for failure to accompany the remittance return with the official receipt issued by an accredited bank.[63] However, petitioner submitted to the Court as evidence the Bank of the Philippine Islands (BPI) official receipt dated December 27, 1999 showing the amount of P2,899,155.96,[64] which

[60] Exhibit "K-3"
[61] Exhibit "LL"
[62] Exhibit "OO"
[63] Page 6, Exhibit "8-B"
[64] Exhibit "OO-4"

included the P2,400,000.00 partial remittance of FWT related to the dividends declared in the year 1999.

The remaining P1,200,000.00 (P3,600,000.00 less P2,400,000.00) FWT due on dividends declared in the year 1999 was previously paid by petitioner in the year 1997 and applied against the tax due on dividends declared in 1999.

Petitioner's Cost Accountant, Ms. Anna Laurice Santos, in her Affidavit[65], stated that in May 1997, there was a recommendation to declare cash dividends amounting to P8 million based on the results of petitioner's operations. On the basis of this recommendation, petitioner's Treasurer remitted and paid the amount of P1.2 million to respondent in 1997 representing 15% FWT due on dividends of P8 million. However, petitioner's Board of Directors did not approve the recommendation and decided to defer the declaration of cash dividends. As it turned out, the P8 million dividends were eventually declared in 1999. Hence, the amount of P1.2 million FWT on the P8 million deferred dividends, which was already paid to respondent in 1997, was considered as an advance tax payment and was credited against the final withholding tax on the same P8 million dividend, when it was eventually declared in 1999.

Petitioner's total tax remittance for the month of May 1997 amounted to P1,465,097.70 of which P1.2 million represented FWT on dividends recommended but not declared nor paid in May 1997, as evidenced by BIR Form No. 1743W[66] filed by petitioner on June 24, 1997. Likewise, petitioner submitted a copy of voucher[67] dated June 24, 1997, which showed a breakdown of the amount of different taxes paid for May 1997 inclusive of the P1.2 million FWT on dividends. Petitioner also

---

[65] Exhibit "ZZZ"
[66] Exhibit "WWW"
[67] Exhibit "WWW-1"

presented a Certification[68] from the BIR's Revenue Accounting Division dated November 28, 2008, stating that petitioner remitted P1,465,097.70 in June 1997.

In order to prove that the advance payment of FWT on dividends of P1.2 million was not previously applied against any FWT on dividends, petitioner presented its audited financial statements[69] for the years 1998 and 1997 showing that from 1997 up to its declaration of dividends in the amount of P24 million in 1999, it did not declare any dividends.

Moreover, to prove that the P1.2 million advance FWT payment was not applied against any withholding tax liability of petitioner, it presented the Monthly Remittance Returns of Income Taxes Withheld[70] from June 1997 up to October 1999. These returns showed that petitioner did not apply the advance payment of P1.2 million as credit against any tax due until November 1999.

Consequently, the Court finds that the deficiency FWT assessment on the dividend payment of P44,000,000.00 should be cancelled for lack of factual basis.

Anent the assessment on the payment of trademark/royalty, the Independent CPA found that respondent's basis was petitioner's debit to Trademark/Royalty account in the amount of P724,994.00. An examination of petitioner's Trademark/Royalty Payable account[71] showed that the amount P724,994.00 is indeed a debit entry, which is also the total amount of all the credit entries to the same account. In effect, the said debit entry reduced the account to zero balance at the end of the accounting period. The adjustment was supported by journal voucher (JV) number 12-921 and instruction by email from a certain Gene Murray.[72]

[68] Exhibit "WWW-2"
[69] Exhibits "XXX", "XXX-1" to "XXX-3"
[70] Exhibits "YYY", "YYY-1" to "YYY-28"
[71] Exhibit "YY"
[72] Exhibit "ZZ-1" and "ZZ-2"

Further, petitioner's Finance Manager explained in his judicial affidavit, that entries relating to the Trademark/Royalty account were subsequently reversed since it was ultimately determined that petitioner did not have to share in any research and development costs, the very reason for which the account was created.[73] Considering the foregoing, the deficiency final withholding tax assessment on payment of trademark/royalty should likewise be cancelled.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessment for deficiency final withholding tax for fiscal year 2000 in the amount of P5,977,242.62 is hereby **CANCELLED**. However, the assessments for deficiency withholding tax on compensation and EWT tax issued by respondent against petitioner for fiscal year 2000 are hereby **AFFIRMED** with some modifications. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the following deficiency withholding tax on compensation in the amount of P3,026,482.91 and deficiency EWT in the amount of P72,518.44, both inclusive of the twenty-five percent (25%) surcharge imposed for late payment under Section 248(A)(3) of the NIRC of 1997, as amended:

Tax Type	Basic Tax	25% Surcharge	Total
Withholding Tax on Compensation	P 2,421,186.33	P 605,296.58	P 3,026,482.91
Expanded Withholding Tax	58,014.75	14,503.69	72,518.44
TOTAL	**P 2,479,201.18**	**P 619,800.27**	**P 3,099,001.35**

Likewise, petitioner is hereby **ORDERED** to **PAY**: (a) deficiency interest at the rate of 20% *per annum* on the total basic deficiency withholding tax on compensation and EWT of P2,479,201.08 computed from December 26, 2000 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997 and (b) delinquency interest at the rate of 20% *per annum* on the total amount due of

[73] Exhibit "A", page 3

P3,099,001.35, and on the 20% deficiency interest which had accrued as afore-stated in (a) computed from January 2, 2004 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice